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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,639	11/05/2002	Jeffrey L. Rice	3707	5968

27256 7590 06/02/2005

ARTZ & ARTZ, P.C.
28333 TELEGRAPH RD.
SUITE 250
SOUTHFIELD, MI 48034

EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/065,639

Applicant(s)

RICE ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17, 19 and 21 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-17, 19 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Response to Amendment

2. Applicant's amendment filed March 15, 2005, has been entered. The specification and claim 12 have been amended as requested and new claim 21 has been added. Thus, the pending claims are 1-17, 19, and 21, with claims 1-11 being withdrawn as non-elected.

3. Said amendment is sufficient to withdraw the objection to the specification as set forth in sections 3 and 4 of the last Office Action (Final Rejection of 12/23/04).

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 12-17 and 19 stand rejected under 35 USC 103(a) as being unpatentable over US 6,296,733 issued to Hudkins et al. in view of US 6,787,593 issued to Bell et al. as set forth in prior Office Actions.

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Applicant has amended the claims to limit the recyclable, rubber-like thermoplastic backing material to include “a plurality of nibs formed thereon.” However, said amendment is insufficient to overcome the standing rejection. Specifically, the inclusion of nibs on the backing material is not believed to affect the claimed method step of pressing the throw-in mat at a desired temperature and pressure. Said nibs are merely descriptive of the desired shape of the product produced from said method. Additionally, it is noted that Hudkins clearly teaches the presence of nibs (col. 1, lines 23-27 and Figures 6 and 7). As such, the new amendment is insufficient to overcome the prior art rejection.

6. New claim 21 is rejected under 35 USC 103(a) as being unpatentable over US 6,296,733 issued to Hudkins et al. in view of US 6,787,593 issued to Bell et al.

The limitations of new claim 21 are analogous to those in claims 12, 14, and 15. As such, claim 21 is rejected for reasons analogous to those presented for said claims.

Response to Arguments

7. Applicant's arguments filed with the amendment have been fully considered but they are not persuasive.

8. Applicant argues the ethylene-octene copolymer of Bell would form incomplete nibs that would break off easily during use (Amendment, page 8, 5th paragraph - page 9, 2nd paragraph). In response, applicant has not provided evidence in support of this assertion. “Mere lawyers’ arguments unsupported by factual evidence are insufficient to establish unexpected results.” *In re Lindner*, 173 USPQ 356. See also *In re Wood*, 199 USPQ 137.

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9. Applicant also argues that the polymer having a melt flow index of 30 would not be contemplated by Bell, since said index is outside of the range required by Bell (Amendment, page 9, 3rd paragraph). However, as previously argued one skilled in the art readily understands the nature of polymer melt flow, how to increase or decrease said melt flow, and what flow is required for a particular molding operation. As such, one would be able to select an appropriate melt flow rate to produce the desired end product.

10. Additionally, it is reiterated that the present claims do not exclude the presence of filler. One skilled in the art would also readily understand the relationship of filler to processing conditions and final product. As such, one would be able to select an appropriate amount of filler to produce the desired end product. Therefore, applicant's arguments are found unpersuasive and the above rejection is maintained.

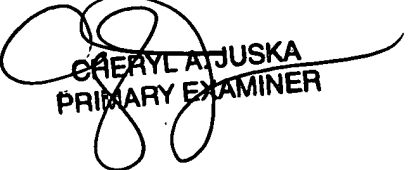
Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CHERYL A. JUSKA
PRIMARY EXAMINER